



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
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DIVISION OF REVENUE

MARCH 14, 1996

TECHNICAL INFORMATION MEMORANDUM 96-1

SUBJECT: TOBACCO PRODUCT SALES

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I INTRODUCTION

This Technical Information Memorandum is intended to clarify the regulations set forth in Division of Revenue Technical Information Memorandum 93-7 regarding the licensing of tobacco product wholesalers and retailers within the State of Delaware and, in particular, with regard to sales at retail by wholesale dealers.

II DEFINITIONS

30 Del. C. § 5301(14) defines a "wholesale dealer" as:

"... any person who regularly sells tobacco products within this State to others who buy for the purpose of resale."

30 Del. C. § 5301(8) defines a "retail dealer" as:

"... any person who purchases or receives stamped tobacco products from any source whatsoever for the purpose of sale to the ultimate consumer."

6 Del. C. § 2602(6) defines "sell cigarettes at wholesale" and similar expressions as:

"... any sale whereby cigarettes are sold for a valuable consideration in the ordinary course of trade or in the usual conduct of the seller's business to a retailer (other than a vending machine operator) for the bona fide purpose of resale to the ultimate consumer"

III. REGULATIONS

In accordance with Technical Information Memorandum 93-7, the Delaware Division of Revenue will not, except under extraordinary circumstances, license any person as a "wholesale dealer" unless the person applying for the license can supply a list of five (5) retail customers to whom the person will sell the tobacco products for the purpose of resale. The retailers' names, business addresses and the retailers' Delaware cigarette retail dealer license numbers must be included on the list. Any person who purchases or receives tobacco products for the purpose of sale to the ultimate consumer must be licensed as a retail dealer. A person who purchases tobacco products for the purpose of resale and also for the purpose of sale to the ultimate consumer must:

1. Obtain a wholesaler and a retailer license for the sale of tobacco products;
2. Separately record and maintain records of wholesale and retail sales. 30 Del. C. § 5321 requires that all wholesalers record the names and license numbers of holders of wholesale and retail licenses to whom tobacco products are sold; and
3. Refuse to sell cigarettes which the wholesaler has reason to believe are to be re-sold at retail at a price below the "cost to the wholesaler" as that term is defined in 6 Del. C. Ch. 26, the "Unfair Cigarette Sales Act." Facts that may give rise to a reason to believe the purchase is intended for re-sale at retail include the sale to a person licensed as both a retailer and a wholesaler and who is known by the seller to carry on a retail business when the volume of sales at or above the "cost to the wholesaler" are small in proportion to the apparent volume of the buyer's retail business.

Additionally, persons licensed as wholesalers are not permitted to purchase within this state at a price below that specified for wholesale sales within this state cigarettes intended to be or which are sold at retail by such purported wholesaler.

Any violation of these requirements may be cause for suspension or revocation of the wholesale and/or retail license as provided for in 30 Del. C. § 5313.



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Director of Revenue